

MEETING RECORD

NAME OF GROUP: City Board of Zoning Appeals

DATE, TIME AND

PLACE OF MEETING: Friday, January 31, 2003, 1:30 p.m., Hearing Chambers, County-City Building, 555 South 10th Street, Lincoln, Nebraska

MEMBERS AND OTHERS

IN ATTENDANCE:

Members: Gerry Krieser, George Hancock, Gene Carroll and Tom Wanser
Others: Rodger Harris (Building & Safety), Tonya Skinner (City Law Dept.), Becky Horner, Missy Minner and Michele Abendroth (Planning Dept.), applicants and other interested parties.

STATED PURPOSE

OF THE MEETING: Regular Meeting of the City Board of Zoning Appeals

Approval of the minutes of the December 20, 2002 meeting -

Mr. Wanser moved approval of the minutes as distributed, seconded by Mr. Carroll. Motion to approve carried 4-0, Wanser, Carroll, Krieser, and Hancock voting 'yes'; Wibbels absent.

Appeal No. 2349 by Dennis Klawonn for a variance to reduce the front yard setback for a sign on property generally located at 1640 A Street.

PUBLIC HEARING

January 31, 2003

Becky Horner stated that she had received a letter from the Near South Neighborhood Association requesting a delay so that the applicant could meet with the neighborhood association on February 10, 2003.

Mr. Wanser made a motion to continue with the hearing as scheduled, seconded by Mr. Krieser.

Motion carried 4-0. Wanser, Krieser, Carroll and Hancock voting 'yes'; Wibbels absent.

Dennis Klawonn stated that he is here on behalf of Capitol View Seventh-Day Adventist Church in reference to a consideration for adjusting the yard requirement for a sign to be positioned at the existing facility as the current sign has limited exposure. He stated that there is a setback from 1915 when the church was constructed. Mr. Klawonn distributed a handout showing the position of the sign that is being requested. He stated that this is a matter of being able to show more visibility to the 17th street traffic. He also noted that this is similar to what has been done with other applications in the neighborhood. He added that they believe it is an enhancement to the existing structure.

All Board members stated that they had visited the site. Mr. Wanser asked if the variance is granted, would it pertain only to the sign. Ms. Skinner stated that the applicant had asked for a variance just for this sign. Mr. Carroll asked if it would replace the sign on A Street. Mr. Klawonn stated that the sign on A Street would probably be removed when the new one is in place. Mr. Carroll then asked if the sign will be lighted. Mr. Klawonn responded that there will be some backlighting.

Mr. Carroll asked if the old sign allowable when they place the new sign. Mr. Harris stated that the

ordinance will allow a sign on each street frontage. Ms. Skinner stated that the resolution will specify that the sign is facing 17th street which would allow them the discretion to be able to keep the other sign if they so choose.

With no one further appearing, the public hearing was closed.

ACTION

January 31, 2003

Mr. Carroll moved for approval, seconded by Mr. Wanser.

Mr. Carroll stated that based on municipal code, the church is allowed one sign on the premises, and there have been approvals on this exact same situation. He stated that it will not interfere with traffic and will not deter from the neighborhood.

Mr. Wanser agreed and also stated that this neighborhood was developed prior to our current zoning setback requirements, and stated that it is a benefit, not a hindrance.

Motion for approval carried 4-0; Carroll, Wanser, Krieser, and Hancock voting 'yes'; Wibbels absent.

Appeal No. 2350 by Lee B. Todd for variances to the front yard setback and interpretations of carport and front yard on property generally located at 4500 South 49th Street.

PUBLIC HEARING

January 31, 2003

Becky Horner introduced the additional digital photograph copies and the history in a memo.

Rob Ott, an attorney in Lincoln, stated that he is representing Lee Todd and his family. Mr. Todd and his family have lived in that residence for about 15 years. This is not the first time the house has had some construction done. Mr. Todd has taken out building permits before, but he failed to get a building permit for this construction. Ultimately, it came down to how the statute was interpreted on whether or not there could be a variance. He stated that this is an interpretation and variance issue. He then stated that there is a picture of the house in the original packet which was taken during prior construction. The implication is that that is how it looked when the deck was being constructed, and that is not accurate. As you stand in front of house looking at the house, the grade goes from left to right and escalates.

Mr. Ott continued by stating that the first point is that he believes there has been a misinterpretation of the code. Code 27.13.080 says that there is a 25 foot setback. Code 27.71.100 says a deck can go 10 feet into the setback. The home sits back from the property line 30 feet, so the setback line is actually in front of the front of the home. This deck sticks less than the 10 feet over the front setback line. Staff has said there is not a 25 foot setback, but it is more than that. Staff has determined that there may be an adjustment to the front yard and argued that the deck goes too far to the front yard. Mr. Ott stated that they know of no place where this has ever been used before. Staff has said that they are not going to use the 25 foot setback, and instead use the "may vary the setback" language that talks about a permissive adjustment of the front yard, and added that they don't understand the rationale of that. He continued by stating that they believe that the Board could find that this deck fits within the 25 foot setback and meets the code, with some exceptions. If the Board doesn't find that this is true, then they are asking for a variance. The variance would only ask for a minor variation of that. Mr. Ott stated that without almost no exception, almost every person on the block supports this construction. This deck is important in the

way of hardship as it is difficult for the Todd's to view their daughter in the back yard and the grandparents who have Alzheimer's. Mr. Ott stated that there are also safety concerns relating to this family.

Mr. Ott also stated that the staff has addressed a carport issue. He stated that the Todds have agreed not to park under the structure. There are steps on the front of the house which the Todds have agreed to take out as the neighbor has asked them to do that. He added that the Todds will landscape the corner of the house so that it will not be viewed as a carport.

Mr. Hancock asked if there was any reason why the normal right to park a car in the front yard on the driveway wouldn't apply here. Mr. Harris replied that the front yard parking is allowable in the ordinance. Mr. Hancock questioned if there is space beyond the sidewalk that is still short of the deck to park a car. Mr. Ott replied that there is. Mr. Wanser asked if the garage would not be used for parking either. Mr. Ott responded that the garage would not be used for parking. Mr. Wanser then asked if Mr. Todd would be parking in the street. Mr. Ott responded that there is enough parking for a car in the driveway.

Mr. Hancock questioned what the definition of a carport is. Mr. Harris cited the dictionary definition as "a covered automobile shelter associated with a separate dwelling and has one or more sides open to the weather". Another definition is "a roof projecting from the side of a building used as a shelter for an automobile". He then stated that the space that we find between that structure and the property line is 15 feet. The section that allows parking in the front yard provides that it be parked parallel to the sidewalk line and two feet from the property lines which leaves space for a 15 foot vehicle. In regard to the 40% rule, Mr. Harris stated that section has been in the ordinance, and Building and Safety has used that section for setbacks anywhere that we have been aware of it. He stated that it has been used many times, and not singled out. Most of the time, our experience has been that it has been used where there is a lesser setback.

Mr. Wanser asked if it is true that we have two definitions of front yard, as it seems one says it is 25 feet and one that says it is an average of 'X' number of homes adjacent to the property. Mr. Harris stated that there are two sections, and the first is in the residential district and the second is in additional height and area regulations. If the conditions of the section relative to adjusted front yard setback apply to that area, then the more restrictive setback will apply. Mr. Wanser asked if the code is clear on that point. Mr. Harris quoted statute 27.81.090 which indicated that it is. Mr. Ott responded that he disagrees in that there are conflicts in the setback. He doesn't agree that the second code provision should be applicable because it is a "may be" adjusted and it is for new buildings. Mr. Hancock asked Ms. Skinner if she has anything to add regarding interpretation. Ms. Skinner stated that she concurs with Building and Safety on their interpretation. She agreed that the statute is confusing regarding the use of "shall" and "may". She then stated that there are only two properties closer than 30 feet, so a majority of the property is setback 30 feet or more, and therefore the more restrictive policy applies.

Mr. Wanser asked if at one point in time, there was a building permit taken out for the deck. Mr. Harris confirmed that there was, but then it was determined that the information was incomplete and it was revoked. Mr. Wanser then asked if the setback was deemed to be 25 feet or by a formula of the other setbacks. Mr. Ott replied that it was deemed to be 25 feet. Mr. Skinner stated that it was her understanding that there was a misunderstanding of the numbers. She continued by stating that when you look at the house, the person who approved this deck thought that the number was a 10, so that would make it only 9 feet into the setback.

It was asked if the application should be amended to adjust the front yard setback to 15 feet. Ms. Skinner stated that they are asking to move this setback either 10 or 14 feet.

Mr. Carroll asked if the Board has to address all three appeals as one part. Ms. Skinner replied that if the Board determines that Building and Safety's determinations were correct, then you would need to be determine if the setback could be moved from 29 ft to 11.5 ft.

Mr. Hancock asked if there was further testimony in favor of the application. There was none.

Mr. Hancock then asked if there was any testimony against the application.

Thomas D. Morrissey, Jr. resides at 4510 So. 49th and stated that his house has a setback of 31 feet. His main objection is the size of the deck and the ability of people to see into his home from the deck. He then stated that if Mr. Todd removed the steps and put in some landscaping, that would be satisfactory to him.

Mr. Harris stated there are two items that he wanted to clarify. On the question of parking in the front yard, there is not enough space to satisfy one required parking space. If there is an action that does not provide for the parking of a vehicle as to the minimum standards in the front yard, that would cause a violation. The second item is on the last option which is an amendment which would vary the amount of distance the porch can project in to the front yard, and that reads 27.5 with the 4 foot removed, and that dimension should be changed to 13.5.

Mr. Hancock asked if there was any more testimony against the application.

David Wacker stated that he has been in the neighborhood for 20 years. He stated that he believes that projects should comply with everyone around the property. He believes that there are reasons for the permits pertaining to safety. He stated that his concern is if Mr. Todd sells that house, what is the next person going to do with the garage.

Mr. Ott rebutted by stating that he believes that the neighbor next door is neutral if the steps are removed and landscaping is done. He stated that if the setback is 25 feet and the Board finds that there has been a misinterpretation, then that establishes that setback line. On the other hand, if the Board finds for a variance, then you do move that setback line back. He stated that regardless of which mechanism is used, they just want to keep the deck.

With no one further appearing, the public hearing was closed.

ACTION

January 31, 2003

Mr. Wanser made a motion to address these items independently of each other and eliminate the application regarding the carport. There was no second.

Mr. Wanser then moved to take these items individually in the order as presented in the packet, seconded by Mr. Hancock.

Motion carried 4-0; Wanser, Hancock, Krieser, Carroll voting 'yes'; Wibbels absent.

Mr. Wanser made a motion to deny the appeal of the determination by the Building Official that an adjusted front yard per Section 27.71.170 is applicable to the location of the existing front porch. It was seconded by Mr. Carroll.

Mr. Wanser stated that he believed that staff is reading and interpreting the section correctly. Mr. Carroll stated that he agreed with Mr. Wanser and his decision is based on the municipal code. Mr. Hancock agreed that it is convoluted, but it is in the ordinance.

Motion to deny carried 4-0; Wanser, Carroll, Krieser, Hancock voting 'yes'; Wibbels absent.

Mr. Carroll made a motion to deny the appeal based on the appeal determination of the building official that Title 27 L.M.C. does not allow a carport in the front yard setback. It was seconded by Mr. Krieser.

Mr. Wanser stated that he has a problem with the definition of a carport, but we are defining code in this case. Mr. Carroll stated the reason for denial is based upon the city attorney's statement that it is double use. Mr. Hancock stated that he has a problem with this application, but doesn't have a problem with the carport. He also noted that he finds it hard to believe that the owner is willing to give up the use of the carport and the garage.

Motion to deny carried 3-0. Carroll, Krieser, Wanser voting 'yes'; Hancock voting 'no'. Wibbels absent

Mr. Wanser made a motion to deny the appeal for a variance from 29 feet to 11.5 feet, seconded by Mr. Carroll.

Mr. Wanser stated that he believed there is no justification for this. Mr. Carroll stated that the variance is set at 29 ft based on the existing neighborhood standards and the applicant knew this at the time of building the deck. Mr. Krieser stated that it doesn't fit in with the neighborhood and looks a little offensive. Mr. Hancock stated that there is no unusual circumstance.

Motion to deny carried 4-0. Wanser, Carroll, Krieser, Hancock voting 'yes'. Wibbels absent.

Mr. Wanser made a motion to approve the projecting of the porch into the required front yard from 10 to 13.5 not the requested 17.5 feet, and this would imply the removal of the steps, seconded by Mr. Hancock.

Mr. Wanser stated that although he is not in favor of people doing what they want contrary to code, but he feels this is a reasonable request. He added that there are some unusual circumstances with this property in regard to the topography. Mr. Carroll stated that he believes that the unusual aspects were brought about by the applicant. Even though the applicant will waive the use of the garage, the next person who buys the house will use it as a garage. He stated that Mr. Todd exceeded the requirement when he built the deck and that doesn't give him a reason to ask for the variance. Mr. Krieser stated that Mr. Todd should have had more correspondence with the city. Mr. Wanser stated that he doesn't think that by denying the first three, the Board was saying anything about the carport, but we were concurring with staff. He believes that there are extenuating circumstances with this lot as it slopes down.

Ms. Skinner clarified that the Board voted on agreeing with staff interpretation on Title 27, thus meaning that Mr. Todd can not use it as a carport. Mr. Harris added that we would not approve this as a carport in the front yard.

No action was taken. Wanser, Hancock voting 'yes'; Carroll and Krieser voting 'no'. Wibbels absent.

There being no further business, the meeting was adjourned at 3:06 p.m.

I:\BZA\MINUTES\2003\01 31 03.wpd